

## **REMARKS**

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following commentary.

### **I. Status of the Claims**

Claim 1 has been amended to recite that the surface stabilizer is absorbed to the surface of the particles. Exemplary support can be found in the original specification, at page 6, lines 15-16. Claim 2 has been amended to delete the recitation of "a semi-amorphous phase." Claims 1, 3, 17, 23, and 28-31 have been amended to delete the term "about."

Claim 13 has been amended to replace the trademarks with their corresponding generic terms. Claim 22 has been amended to set forth the subject matter more clearly. Claims 27 and 37 have been amended to correct typographical errors.

Because no new matter is introduced, Applicants respectfully request entry of this amendment. Upon entry, claims 1-31, 36-38, 40 and 44 are under examination, with claims 32-35, 39, 41-43 and 45-95 previously withdrawn.

### **II. Statement of the Substance of the Interviews**

Applicants thank Examiner Tristan Mahyera for the courtesy extended during a telephone interview with Applicants' representative, Yang Tang, on August 20, 2007. During the interview, Examiner Mahyera requested that Applicants make a species election within three days. Applicants timely responded to the request and elected "codeine" for species #5.

Applicants thank Examiner Mahyera and Examiner Ardin Marschel for the second interview conducted with Applicants' representatives, Christian Bauer and Yang Tang, on December 4, 2007. During the interview, possible amendments to claim 1, as well as the teaching of WO 2005/000273, were discussed.

Applicants' representatives proposed to amend claim 1 to recite that the surface stabilizer is adsorbed on the surface of the nimesulide particles. Neither Examiner Mahyera nor Examiner Marschel objected to such amendments during the teleconference. Instead, the Examiners agreed to consider these claim amendments when submitted.

In connection with the teaching of WO 2005/000273, Applicants' representatives pointed out that the prior art does not teach the physical interaction between the drug and the copolymer N-vinyl-2-pyrrolidone/vinyl acetate, and that the disclosure at page 3, lines 15-20, is contradictory with that at page 11, lines 31-33, with respect to the teaching of improving the crystalline structure or de-structuring. The Examiners agreed to reconsider the prior-art teaching. Applicants' arguments are presented in more details in section V of this response.

### **III. Claim Objections**

Claim 27 is objected to for a typographical error. Applicants have amended claim 27 to correct the error thereby obviating the basis for the objection.

### **IV. Rejection of Claim under 35 U.S.C. § 112, second paragraph**

Claims 1-31, 36-38, 40 and 44, more specifically, claim 1, 13, 22 and 37 are rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. Applicants respectfully traverse each of the rejections.

Specifically, the Examiner rejects the claims for recitation of "about" in claim 1. Claim 1 has been amended to delete the term.

Claim 13 has been rejected for the use of trademarks. Applicants have amended claim 13 to replace the trademarks with their corresponding generic terms.

Claim 22 has been rejected for the recitation of "significantly." Claim 22 has been amended to delete the term in question and to set forth the subject matter more clearly.

Claim 37 has been rejected for inconsistency with the base claim that it depends from. Claim 37 has been amended to correctly recite “composition” instead of “method.”

In view of the foregoing, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

**V. Rejection of Claims under 35 U.S.C. § 102(e)**

Claims 1-14 and 27-31 are rejected under 35 U.S.C. § 102(e) for alleged anticipation by WO 2005/000273 by Olivieri *et al.* (“Olivieri”). Applicants respectfully traverse the rejection.

Olivieri discloses a composition obtained by co-grinding an active agent with a carrier comprising a N-vinylpyrrolidone/vinyl acetate (NVP/VA) copolymer. *See*, for example, page 1, lines 5-8 and the examples. The examples describe that nimesulide is dry-mixed with NVP/VA and co-grinded. There is no express teaching throughout the entire disclosure of Olivieri of any physical interaction between nimesulide and NVP/VA as a result of the mixing and co-grinding processes. By contrast, the claimed nimesulide composition expressly requires the structural relationship that the surface stabilizer, such as NVP/VA, is adsorbed on the surface of the nimesulide particles. Accordingly, Olivieri lacks an express teaching of the claimed feature that the surface stabilizer is adsorbed on the surface of the particles. Withdrawal of the anticipation rejection under § 102(e) is requested.

Applicants acknowledge that anticipation may be inherently described in a prior art reference. Olivieri, however, contains two conflicting statements that do not allow one of ordinary skill in the art to draw any conclusions as to the physical interaction between the NVP/VA and the nimesulide. Therefore, no reasonable conclusion as to the inherent teachings of Olivieri can be properly made. The first statement in Olivieri is “the use of linear copolymer N-vinyl-2-pyrrolidone/vinyl acetate as carrier for co-grinding of scarcely water soluble drugs results in improvements of the crystalline structure of said drugs (reduction of melting enthalpy and/or melting point)” (page 3, lines 15-20). The second statement is “NVP/VA has a clearly higher

ability in de-structuring nimesulide (lower melting enthalpies and temperatures)” (page 11, lines 31-33). NVP/VA cannot both improve the crystalline structure of nimesulide and de-structure nimesulide. Moreover, both these events cannot result in the same outcome, i.e., the reduction of melting enthalpies and temperatures. Because of these contrary teachings, one of ordinary skill in the art would not have concluded that the mixing and co-grinding processes of Olivieri would inherent result in the NVP/VA being adsorbed on the surface of the nimesulide. Therefore, no reasonable conclusion as to the inherent teachings of Olivieri can be properly made.

Because Olivieri does not expressly or inherently teach each and every aspect to anticipate the claimed invention, withdrawal of the rejection is warranted.

**VI. Rejection of Claims under 35 U.S.C. § 103(a)**

**A. Olivieri, Singh and Bosch**

Claims 2 and 15-26 are rejected under 35 U.S.C. § 103(a) for alleged obviousness over Olivieri in view of Singh *et al.* (*Analytical Profiles of Drug Substances and Excipients*, Vol. 28, 2001, pp. 197-249) (“Singh”) and U.S. Patent No. 5,510,118 to Bosch *et al.* (“Bosch”). Applicants respectfully traverse the rejection.

**B. Olivieri, Singh, and Merck Index**

Claims 36-38 and 40 are rejected under 35 U.S.C. § 103(a) for alleged obviousness over Olivieri in view of Singh and Merck (Merck Index 12<sup>th</sup> ed., Merck & Co., 1996, codeine, pp. 416-417). Applicants respectfully traverse the rejection.

**C. Olivieri and Buhl**

Claim 44 is rejected under 35 U.S.C. § 103(a) for alleged obviousness over Olivieri in view of U.S. Patent No. 5,776,563 to Buhl *et al.* (“Buhl”). Applicants respectfully traverse the rejection.

Claim 1 was not rejected as obvious in the above-captioned rejections. Because the claims listed in the above-captioned rejections all depend directly or indirectly from claim 1 and a dependent claim is read to include all the limitations from the claim(s) from which it depends, the dependent claims of the present invention are also not obvious. In view of the foregoing discussions, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. §103(a).

#### CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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